

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DONALD BUSCH

Claimant

VS.

JOHNSON'S GENERAL STORES

Respondent

AND

FARMLAND MUTUAL INSURANCE CO.

Insurance Carrier

AND

WORKERS COMPENSATION FUND

Docket No. 196,282

ORDER

Claimant requested review of the Award dated May 29, 1996, entered by Special Administrative Law Judge Michael T. Harris. The Appeals Board heard oral argument November 7, 1996.

APPEARANCES

Thomas M. Warner, Jr., of Wichita, Kansas, appeared for the claimant. Eric K. Kuhn of Wichita, Kansas, appeared for the respondent and its insurance carrier. Randall C. Henry, of Hutchinson, Kansas, appeared for the Workers Compensation Fund.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The Special Administrative Law Judge determined that claimant's injuries constituted a traumatic hernia and, therefore, under K.S.A. 44-510d(a)(22) awarded claimant temporary total disability benefits and medical benefits. Claimant asked the Appeals Board to review the finding of nature and extent of disability and contends that claimant is entitled to permanent partial general disability benefits. Nature and extent of disability is the only issue before the Appeals Board on this review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After considering the entire record, the Appeals Board finds as follows:

The Award entered by the Special Administrative Law Judge should be affirmed.

The Appeals Board agrees with the conclusion of the Special Administrative Law Judge that claimant sustained a hernia and, therefore, claimant is precluded from receiving permanent partial general disability benefits under the provisions of K.S.A. 44-510d(a)(22). That conclusion is based upon the persuasive testimony of surgeon Jace W. Hyder, M.D., who was one of claimant's treating physicians. In describing claimant's condition following the alleged February 28, 1994 accident, Dr. Hyder testified as follows:

"Q. Okay. Moving on to the, quote, slipped Nissen procedure. And first off, slipping is not really the correct term, is that -- is that right, from what you found?

"A. Not for what happened to him.

"Q. What --

"A. There is such a thing as a slipped Nissen.

"Q. But that's not --

"A. And I was suspicious of that, but that's not really what happened to him.

"Q. Okay. Explain what his situation was as opposed to a slipped Nissen.

"A. His stomach and his Nissen fundoplication wrap pushed it way back up into his chest through an abnormal location through the diaphragm, opening in the diaphragm.

"Q. Okay. Would his Nissen injury, for lack of a better term, would that be considered a hernia, in and of itself?

"A. The correct term for what happened to him is a recurrent diaphragmatic hernia.

"Q. And that encompasses the Nissen problem as well?

"A. Yeah, they're two separate things. The Nissen popped back into his chest, but it was okay except it was a little bit loose. And so the problem that he had that caused him the symptoms, in my opinion, was that his Nissen fundoplication wrap worked its way back up into his chest because of a recurrent diaphragmatic hernia.

"Q. Okay.

"A. His diaphragmatic opening became larger, causing his stomach and the wrap to go back up in the chest. So it's not really a Nissen problem, it's a hernia problem."

The Appeals Board adopts the findings and conclusions of the Special Administrative Law Judge relating to the nature of claimant's injuries and the conclusion that claimant is limited to benefits as provided by the scheduled injury statute.

Because of that finding and conclusion, the Appeals Board does not reach the issue whether claimant has sustained any loss of ability to perform work tasks or whether there is a difference in his pre- or post-injury earnings.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated May 29, 1996, entered by Special Administrative Law Judge Michael T. Harris, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Thomas M. Warner, Jr., Wichita, KS
Eric K. Kuhn, Wichita, KS
Randall C. Henry, Hutchinson, KS
Michael T. Harris, Special Administrative Law Judge
Office of Administrative Law Judge, Wichita, KS
Philip S. Harness, Director